

aware of those benefits. Again, an informal workshop is a better approach over a one size fits all rule making effort.

Lifeline Requirements

9. As described above, the Order imposes a new and expanded Lifeline requirement that conflicts with the Federal Communication Commission (“FCC”) rules. The central issue is to what rate plans must the Lifeline discount be applied. FCC Rule § 54.403(b) requires the discount be applied to the “lowest tariffed (or otherwise generally available) residential rate for the services.” The word “lowest” qualifies both the tariffed rate plans, which the wireless ETC have none, and the otherwise generally available rate. The parenthetical phrase was included because wireless ETCs do not have tariffs; however, the designated rate is still only the “lowest... otherwise generally available ... rate”. Any other interpretation would impose a different requirement on tariff filing ETCs compared to non-tariff filing ETCs. The tariff filing ETCs would only discount their lowest rate and the non-tariffed ETC would be required to discount all of their rates. Such a discriminatory interpretation would not be lawful or meaningful. The Order, which adopted a misinterpretation of the FCC Rule, would render the word “lowest” meaningless or would create a different and unlawful discriminatory requirement applicable only to competitive ETCs.

10. The Order’s interpretation is also not practical because it would conflict with the overall intent of Lifeline. The intent of such a program, as referenced by the FCC’s web site quoted in the Order, is that it “gives people with low incomes a discount on basic monthly service...” The FCC, very logically, did not indicate it is a discount to enable or encourage people with low incomes to purchase the most expensive and most expansive rate and service plan available thereby encouraging people with low incomes to stretch their already limited

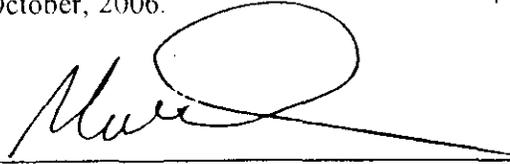
resources. Rather, very wisely and practically, the FCC's focus is "basic monthly service" and, therefore, directed this discount to the lowest tariffed or lowest otherwise generally available rate. Again, because the FCC said clearly it is the lowest rate, either tariff or otherwise generally available, the Order ignores the plain meaning and conflicts with the FCC Rule.

11. The Order's requirement is also illogical due to the fact that ETCs are not allowed to charge Lifeline customers a deposit if the customer has elected toll blocking. 47 CFR §54.401(c). The no deposit requirement is again consistent with the FCC's recognition that it would be inappropriate to encourage low income people to buy the most expensive service plan. If the Order's rewrite of the Lifeline rule was correct then the Lifeline customer would not only be incented to overspend his limited resources by obtaining a discount from such higher rated plans, but would be further incented to do so because no deposit could be required. This result is a disservice not only to the low income customer, but also to the ETC. The result would leave the ETC without any security and very inadequate subsidy from ETC funds for the most expensive service packages. The FCC recognized this illogical and impractical result and tied the Lifeline discount and therefore the no deposit rule to only the lowest rate available, the basic plan.

12. Alltel is currently certified as an ETC in more than 25 jurisdictions, including the Pine Ridge Indian reservation. The Order is the only attempt by any of these jurisdictions to expand the applicability of the Lifeline discount to all rates, rather than the lowest rate. The Kansas ETC Lifeline requirement should be modified consistent with this petition and the FCC Rule.

WHEREFORE, Alltel respectfully request the Commission reconsider the Order and modify it as provided above.

Respectfully submitted this 20th day of October, 2006.

A handwritten signature in black ink, appearing to read 'Mark P. Johnson', with a large, stylized loop at the end of the signature.

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LIMITED PARTNERSHIP**

Certificate of Mailing

I hereby certify that a true and correct copy of the above and foregoing was served via U.S. mail, First-Class, postage prepaid on each of the following parties on this 20th day of October, 2006:

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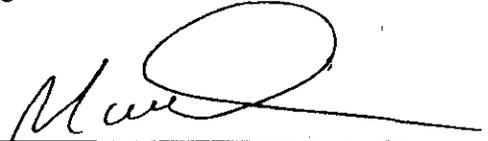
VERIFICATION

STATE OF MISSOURI)
)
COUNTY OF JACKSON)

ss.

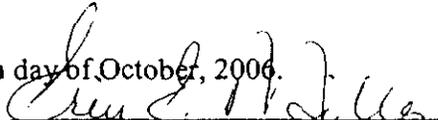
Comes now Matthew Faul, being of lawful age and duly sworn, who swears and affirms that he is an attorney for Alltel Kansas Limited Partnership, that he is authorized to verify the foregoing on behalf of Alltel Kansas Limited Partnership, and that the foregoing is true and accurate to the best of his knowledge and belief.

Further Affiant sayeth not.



Matthew Faul

Subscribed and sworn to before me this 20th day of October, 2006.



Notary Public

My commission expires:

ERIN E. MILLER
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires: June 29, 2007

ATTACHMENT 4

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Brian J. Moline, Chair
 Robert E. Krehbiel
 Michael C. Moffet

In the Matter of a General Investigation) Docket No. 06-GIMT-446-GIT
Addressing Requirements for Designation of)
Eligible Telecommunications Carriers.)

ORDER ADDRESSING PETITIONS FOR RECONSIDERATION

The above-captioned matter comes before the State Corporation Commission of the State of Kansas ("Commission"). Having reviewed its files and records and being fully advised in the premises, the Commission finds as follows:

I. Background

1. On October 2, 2006, the Commission issued its Order Adopting Requirements for Designation of Eligible Telecommunications Carriers. Sprint Nextel Corporation (Sprint) filed its Petition for Reconsideration on October 19, 2006. RCC Minnesota, Inc., USCOC of Nebraska/Kansas LLC (RCC and USOCC) and Alltel Kansas Limited Partnership (Alltel) filed their Petitions for Reconsideration on Friday, October 20, 2006.

2. Sprint requested reconsideration of the following four requirements: that competitive telecommunications carriers (CETC) include language in all their advertising on their obligation to provide universal service and contact information for the Commission's Office of Public Affairs and Consumer Protection; that CETCs that do not provide unlimited local usage must offer free per minute blocking of local usage to Lifeline customers; that wireless eligible telecommunications carriers (ETC) must offer at least one calling plan without a termination fee; and, that ETCs must allow Lifeline customers to choose a plan.

and K.S.A. 66-1,143(b), which state that wireless carriers "shall not be subject to the jurisdiction, prohibition in state law against regulating such carriers." Sprint claims that K.S.A. 66-104a(c)

Commission's advertising requirements, when applied to wireless carriers, violates the

7. Sprint and Alltel request reconsideration of this issue. Sprint argues that the

Affairs and Consumer Protection.

to include in their advertising the contact information for the Commission's Office of Public Staff for review so that the language can be included in advertising. CETCs were also required obligations. Within 90 days of the Commission's order, CETCs must provide the language to all of their advertisements in the FTC areas they serve explaining the CETCs' universal service

6. In its Order, the Commission concluded that CETCs must provide information in

II. Advertising Requirement

issues.

Reconsideration and provided its recommendation to the Commission on how to address those Petitions for Reconsideration. Staff addressed the issues raised in the Petitions for

5. On November 1, 2007, the Commission's staff (Staff) filed its response to the

billing practice standards being considered in Docket No. 06-GIMT-187-GIT.

that the Commission should address, in this docket, the applicability to wireless ETCS of the RCC and USCOC argued that service quality improvement plans should apply to all ETCS and the requirement that wireless ETCS offer a calling plan without a termination fee. Additionally,

4. RCC and USCOC requested reconsideration of the toll blocking requirement and

requirement to allow Lifetime customers to choose a plan.

3. Alltel requested reconsideration of the advertisement requirement and the

regulation, supervision, and control of the state corporation commission” means that the Commission cannot apply the advertising requirements to wireless ETCs.²

8. Sprint argues that the ETC designation process does not supersede the prohibition in Kansas law against regulation of wireless carriers. Sprint states that the Commission is a creature of statute, and the federal ETC process that grants states authority to designate ETCs does not provide the Commission with more authority than is granted by the Kansas Legislature.³ Sprint argues that 47 U.S.C. § 254(f), which grants states authority to adopt additional ETC regulations is permissive and does not confer authority for the Commission to do what it is otherwise prohibited from doing pursuant to state law.⁴

9. Alltel does not focus on this issue in its Petition, but says it does not agree that the Commission has authority to impose these requirements on wireless carriers.⁵

10. Staff addresses Sprint’s and Alltel’s arguments relating to the advertising requirements in its November 1, 2007 response. Staff disagrees with the argument that the Commission lacks authority to implement these requirements on wireless ETCs. Staff argues that the authority cited by Sprint predates both the 1996 Federal and State Telecommunications Acts which provided the Commission authority to designate ETCs.⁶ Staff agrees that the Commission is generally prohibited from regulating wireless carriers, but the statutes and the *Citizens’ Utility Ratepayer Board v. Kansas Corporation Commission, et al.*, 264 Kan. 363 (1998), the case cited by Sprint, do not discuss the mechanisms for ETC designation.⁷

² Sprint Petition at ¶ 8-9.

³ Sprint Petition at ¶ 10.

⁴ Sprint Petition ¶ 12.

⁵ Alltel Petition at ¶ 3.

⁶ Staff Response at ¶ 5.

⁷ Staff Response at ¶ 5.

11. The Commission agrees that it does not have authority to impose regulation on wireless carriers as such, but that is not the issue presented here. The Commission is imposing advertising requirements on all CETCs, some of which are wireless carriers. The Commission has in prior dockets addressed the question of whether the Commission has authority to impose requirements on ETCs that are wireless carriers and has consistently concluded that it does. In Docket 00-GIMT-584-GIT, the Commission said the following about the issue:

Conditioning receipt of state universal service support on non-discriminatory requirements on all ETCs related to the provision of universal service would not be an unlawful exercise of jurisdiction over radio common carriers. Radio common carriers would obviously be free to decide whether they are prepared to comply with any such conditions or to abstain from receiving support.⁸

Sprint raised the issue again in Docket No. 05-GIMT-187-GIT. Again, the Commission concluded that it has jurisdiction to impose conditions such as these advertising requirements in the context of ETC designation. In response to Sprint's arguments in that case, the Commission said the following:

Sprint may be arguing that the jurisdictional discussion in the 584 Docket was dicta, and, given further determinations below, Sprint may hold a similar interpretation of this order in the future. Regardless, the Commission made a legal determination therein which was *unchallenged*. The Commission again reaffirms that it is consistently holding to that legal determination and, until it is presented with clear and controlling authority to the contrary -- something Sprint has failed to produce in this docket -- the Commission determines that it has the jurisdiction to impose quality of service standards on wireless ETC carriers as a condition to the distribution of KUSF funds in addition to the ETC designation. If a wireless carrier makes the decision to avail itself of the benefit of universal service funds, that carrier also subjects itself to commission jurisdiction which is based on the

⁸ *In the Matter of a General Investigation into Quality of Service Standards to Determine whether a Uniform Set of Standards Can be Applied to all Eligible Telecommunications Carriers*, Docket No. 00-GIMT-568-GIT (584 Docket), Order 3: Addressing Jurisdiction, issued May 5, 2005.

Commission's duty to effectively and reasonably carry out its duties under federal and state statutory provisions.⁹

12. While these earlier dockets were focused on quality of service, the rationale is the same. The Commission has consistently held that it has jurisdiction over wireless ETCs in their capacity as an ETC. Neither Sprint nor Alltel has pointed to any "clear and controlling authority" that justifies a departure from this Commission's prior holdings on the issue. A wireless carrier that submits to the jurisdiction of this Commission for the purpose of ETC designation is subject to the conditions imposed by the Commission in order to be designated as an ETC.

13. Beyond the jurisdictional arguments, Sprint complains that the Commission's requirements that ETCs advertise their universal service obligations and include contact information for the Commission's Office of Public Affairs and Consumer Protection is inconsistent with the FCC's universal service rules. Those rules require carriers to advertise the availability and charges for universal services using media of general distribution.¹⁰ Sprint appears to agree that the Commission has authority to require a carrier to advertise its "universal service obligations," but states it is unclear which "universal service obligations" are at issue.¹¹ Regardless, Sprint states that requiring the Commission's contact information does conflict with the FCC rules because the FCC has not "construed the federal advertising requirement as extending beyond the obligation to advertise the availability of and charges for the supported services."¹²

⁹ *In the Matter of General Investigation into Modification of the Quality of Service Standards*, Docket No. 05-GIMT-187-GIT (187 Docket), Order on Motions of Sprint, SWBT, and COX issued March 7, 2006.

¹⁰ See, 47 U.S.C. § 214(e)(1)(B) and 47 C.F.R. § 54.201(d)(2)

¹¹ Sprint Petition at ¶14.

¹² Sprint Petition at ¶14.

¹³ Staff Response at ¶7.
¹⁴ Staff Response at ¶6.
¹⁵ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, Rel. March 17, 2005 (March 17, 2005 *Report and Order*)
¹⁶ Staff Response at ¶7 citing March 17, 2005 *Report and Order* at ¶61

The Commission views the requirement that CFTCs include language regarding their universal service obligation in their advertising as merely a mechanism to ensure the requirements of 254(e)(1) are met. The Commission agrees with Staff that the requirement to include the contact information for the Office of Public Affairs and Consumer Protection simply ensures that

- (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) [47 USCS § 254(c)], either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier; and
- (B) advertise the availability of such services and the charges therefore using media of general distribution.

Those requirements are to:

- 15. 47 U.S.C. § 214(e)(2) delegates to the state commissions the authority to designate a carrier as an ETC. That section requires the state commission to find that the designation is in the public interest and that the requirements of 47 U.S.C. § 214(e)(1) are met.

own ETC eligibility requirements."¹⁶
*Report and Order*¹⁵ which states that state commissions are "well-equipped to determine their that the Commission is not obligated to mirror those rules. Staff cites the FCC's March 17, 2005 in the public interest."¹⁴ Staff states that the requirements are consistent with the FCC's rules, but customers know what to expect from CFTCs and further ensure that the designation as an ETC is services and charges."¹³ In addition, Staff states that the advertising requirements ensure that U.S.C. § 214(e)(1), which requires ETCs to offer universal services and to advertise those

14. Staff argues that the advertising requirements simply ensure compliance with 47

customers know where to turn with questions and complaints, a requirement that will help ensure designation of an ETC is in the public interest. The Commission concludes that the advertising requirements are consistent with the FCC's rules. Additionally, to the extent Sprint views these requirements as going beyond the federal requirements, the FCC, as explained by Staff, has determined that state Commissions are in the best position to determine their own eligibility requirements.

16. Sprint argues that the advertising rules are inconsistent with the FCC's rules because they are not competitively neutral because they only apply to CETCs and not incumbent ETCs. Sprint claims this puts CETC at a disadvantage because they will have to modify their national advertising campaigns whereas incumbent ETCs will not.¹⁷ Alltel also argues that the advertising requirements should be applied to all ETCs, not just CETCs.¹⁸

17. Staff explains that the application of the rules to CETCs is necessary because CETCs do not have directories.¹⁹ The Commission agrees. Incumbent ETCs have directories with contact information for the Commission. As explained by Staff, customers of the incumbent ETCs are generally aware of the obligations to provide services and can obtain contact information for the Commission if consumers have questions or complaints with the services provided. Providing information about services and the Commission's contact information will ensure that a CETC's customers have the same information available to customers of incumbent ETCs. As discussed below, the Commission will reconsider its order regarding advertising to ameliorate concerns Sprint and Alltel have concerning the obligation CETCs have to modify national advertising campaigns.

¹⁷ Sprint Petition at ¶16.

¹⁸ Alltel Petition at ¶7.

¹⁹ Staff Response at ¶8.

18. Sprint claims the advertising requirements amount to an unfunded mandate. 47

U.S.C. § 254(f) provides as follows:

A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

Sprint argues that the advertising requirements violate this provision by placing an additional burden on CETCs without providing support to defray the costs of implementing the requirements.²⁰

19. The Commission does not view these advertising requirements as a burden on “Federal universal service support mechanisms” in any way. As Staff states, the new rules are simply a cost of doing business and a necessary requirement if a company is seeking universal service support.²¹ If additional costs are incurred, they are the costs necessary to meet the requirements of meeting eligibility requirements and can be recovered in the ETCs’ rates.

20. Sprint states the advertising requirements are vague by not detailing the services that must be advertised.²² Sprint also argues that the Commission’s order improperly delegated the job of determining the proper wording of the advertisements to Staff.

21. The Commission is confident that Staff and the CETCs can work together to develop language that is clear and satisfies the advertising requirement. As explained by Staff, Alltel, RCC and USCOC, and other companies have been able to work with Staff to comply with the advertising requirements in their individual ETC designation dockets.²³ Finally the Commission does not view its directive to work with Staff as a delegation of power. If Sprint

²⁰ Sprint Petition at ¶17.

²¹ Staff Response at ¶8.

²² Sprint Petition at ¶19.

²³ Staff Response at ¶ 9.

and Staff work together and either party believes the results of that work are not consistent with the advertising requirements of this order, that dispute can be brought to the Commission for resolution. The Commission fully expects to resolve any disputes between Staff and the CETCs on this issue.

22. Finally, Sprint argues that the advertising requirements are overbroad and burdensome. Sprint argues that the requirements can be construed as applying to all advertising, not just print advertising.²⁴ Sprint states that tailoring national advertising to state-specific advertising requirements is overly burdensome.²⁵

23. Alltel proposes what it believes are less burdensome alternatives that will accomplish the same goals. Alltel says that periodic and targeted advertisements to customers in ETC areas would be effective and less burdensome than requiring that all advertisement include the information required by the Commission.²⁶ Alltel suggests that a workshop to discuss this targeted approach is a better solution than the requirements implemented in the Commission's order.²⁷

24. In its response, Staff agreed that it is not reasonable to include the required language in "all" advertising.²⁸ Staff believes that the Commission should follow prior precedent in the prior ETC dockets and limit the advertising requirements to print advertisements that are designed to reach customers in the CETC's designated service area.²⁹

25. The Commission agrees with the concerns raised by petitioners regarding the burden that will be imposed if the advertising requirement is imposed on all advertising. The

²⁴ Sprint Petition at ¶ 21.

²⁵ Sprint Petition at ¶ 22.

²⁶ Alltel Petition at ¶ 5.

²⁷ Alltel Petition at ¶ 8.

²⁸ Staff Response at ¶ 9.

²⁹ Staff Response at ¶ 10.

Commission grants reconsideration of its order and adopts Staff's recommendation as follows: The advertising requirements are to be applied only to print advertising that is designed to reach those customers in a CETC's designated service area. However, if a CETC chooses not to advertise through print in its designated area, the advertising requirements must be met through another form of advertising.

III. Free Optional Per Minute Blocking for Lifeline Customers

26. In its Order, the Commission directed CETCs that do not provide unlimited local usage to offer free per minute blocking of local usage to Lifeline customers within 90 days.

27. Sprint argues that the decision by the Commission to require ETCs to offer per minute blocking of local usage amounts to rate regulation and violates 47 U.S.C. § 332(c)(3)(A) which prohibits state government from regulating entry or rates of wireless carriers.³⁰

28. RCC and USCOC also argue that the Commission's requirement that wireless ETCs either offer unlimited local usage or per minute blocking violates the prohibition against regulating a wireless carrier's rates.³¹ RCC and USCOC state that such a requirement precludes wireless carriers from charging by the minute for overage.³² RCC and USCOC argue that Lifeline customers have competitive choices that will enable them to select plans to avoid per minute charges.³³

29. Staff explains that no evidence has been presented of the cost, if any, of implementing free per minute blocking of local usage to Lifeline customers.³⁴ Staff states the purpose of this requirement is to assist Lifeline customers in the management of their

³⁰ Sprint Petition at ¶23.

³¹ RCC and USCOC Petition at ¶ 4.

³² RCC and USCOC Petition at ¶ 4.

³³ RCC and USCOC Petition at ¶5.

³⁴ Staff Response at ¶11.

telecommunications bills.³⁵ Staff argues that the per minute blocking requirement is consistent with the FCC's requirement that ETCs block toll in order to increase the likelihood that Lifeline customers remain on the telecommunications network.³⁶ Staff states that requiring optional per minute blocking is critical when a carrier does not offer a Lifeline customer a choice in plans. Staff notes that Sprint has requested reconsideration of the requirement in the Order that carriers offer Lifeline customers a choice in plans.³⁷

30. Sprint argues that the per minute toll blocking requirement amounts to an impermissible regulation of interstate services. Sprint argues that the interstate and intrastate portions of its plan are inseparable; therefore, the Commission cannot regulate those offerings.³⁸ Sprint cites to a Colorado Federal District Court opinion for support of its position that wireless carriers cannot separate intrastate and interstate services.³⁹

31. Finally, RCC and USCOC voice concern that compliance with this requirement will be difficult, if not impossible. RCC and USCOC state they do not currently offer an unlimited local usage option, so it is exploring compliance with the requirement to offer optional per minute blocking. RCC and USCOC state that it is uncertain at this time whether such an option is achievable.⁴⁰

32. Staff maintained its support for the optional per minute blocking requirement, stating that the requirement has merit. However, Staff states that additional information is required before the Commission affirms its decision.⁴¹

³⁵ Staff Response at ¶ 12.

³⁶ Staff Response at ¶ 12.

³⁷ Staff Response at ¶ 14.

³⁸ Sprint at ¶ 32.

³⁹ Sprint Petition at ¶ 33 citing to *WWC Holding Company, Inc. v. Sopkin*, 420 F. Sup. 2d 1186, 1197 (D. Colo. 2006).

⁴⁰ RCC and USCOC Petition at ¶ 6.

⁴¹ Staff Response at ¶ 14.

33. Given the arguments presented on reconsideration, the Commission agrees to

reconsider its requirement that CFTCs offer optional per minute blocking to lifetime subscribers if they do not offer unlimited local calling. The reconsideration is granted to obtain additional information. The Commission seeks additional comment on whether it is technically feasible for CFTCs to offer per minute blocking. Additionally, comments are requested that address the incremental cost of such blocking. Comments may address other issues related to per minute blocking. Comments are due December 20, 2006. Reply comments are due January 12, 2007.

IV. Calling Plan without a Termination Fee

34. In its Order, the Commission required all ETCs to offer at least one service plan that does not include a termination fee. The Commission required CFTCs to advertise the availability of such a plan.

35. RCC and USCOC and Sprint seek reconsideration of this requirement. Both argue that this requirement violates the prohibition against state regulation of rates.⁴² RCC and USCOC argue that the Order ignores the fact that termination fees are integral part of a wireless carrier's rate structure.⁴³

36. RCC and USCOC state that terminations fees are essential as a mechanism to delay costs of discounting customer equipment.⁴⁴ Also, according to RCC and USCOC, choices already exist for those customers that do not want subsidized handsets. RCC and USCOC state that many wireless carriers offer a month-to-month contract and prepaid service to customers paying an unsubsidized price for the handset.⁴⁵

⁴² 47 U.S.C. § 332(c)(3)(A).
⁴³ RCC and USCOC Petition at ¶ 10.
⁴⁴ RCC and USCOC Petition at ¶ 10.
⁴⁵ RCC and USCOC Petition at ¶ 12.

37. Sprint argues that the Commission's decision on this issue is not supported by

substantial evidence. Sprint states that the basis for the Commission's decision is the

dissatisfaction of customers with early termination fees.⁴⁶ Sprint stated that the statistical

evidence regarding complaints that the Commission relied on does not reflect the downward

trend in complaints regarding termination fees.⁴⁷ Sprint stated that the 2nd Quarter 2006 FCC

report identifies 486 complaint related to termination fees, as opposed to the over 1000

complaints in the 3rd quarter 2005 relied on by the Commission.⁴⁸

38. Sprint further argues that the CTIA Consumer Code for Wireless Service requires

advance notice of termination fees to customers and requires that carriers allow a customer at

least 14 days to cancel service without a termination fee.⁴⁹ Sprint notes that it provides

customers with a 30-day trial period.⁵⁰

39. Staff, noting that the additional evidence about consumer data was not in the

record when the Commission issued its Order, recommended that the Commission reconsider its

Order requiring ETFCs to offer at least one plan without a termination fee.⁵¹ Staff states that plans

that require a carrier to obtain a handset separate from the service plan and without a termination

fee achieve the same goal as the Commission's requirement on this issue.

40. The Commission agrees with Staff's recommendation. Given the arguments and

information presented in the Petitions for Reconsideration, the Commission reconsiders its ruling

that all ETFCs must provide a plan without a termination fee. The offering of such a plan will not

⁴⁶ Sprint Petition at ¶ 37.

⁴⁷ Sprint Petition at ¶ 37.

⁴⁸ Sprint Petition at ¶¶ 37-38.

⁴⁹ Sprint Petition at ¶¶ 41-42.

⁵⁰ Sprint Petition at ¶ 42.

⁵¹ Staff Response at ¶ 17.

be a requirement. Given that decision, the request to reconsider the requirement to advertise a plan without a termination fee is moot.

V. Allowing Lifetime Customers a Choice in Plans.

41. The Commission found that all ETCS shall allow Lifetime customers to select a plan and have the Lifetime discount applied to that plan. Most of the parties filing comments supported such a finding.⁵² RCC and USCOC stated it is its practice to allow Lifetime customers to select a plan and then apply the discount to that plan.⁵³ Sprint and Alltel now seek reconsideration of this part of the Commission's Order.

42. Sprint and Alltel both argue that the requirement that Lifetime customers be allowed a choice of plans conflicts with the FCC's rules. The rule at issue is 47 C.F.R. § 54.403(b), the relevant language of which states as follows:

Other eligible telecommunications carriers shall apply the Tier-1 amount to reduce their lowest tariffed (or otherwise generally available) residential rate for the services ..., and charge Lifetime customers the resulting amount.

In its Order, the Commission agreed with Staff's interpretation that the "or otherwise generally available" language means that Lifetime support should be applied to plans other than the lowest tariffed residential rate.⁵⁴ Sprint and Alltel now argue that the parenthetical language is there because certain carriers do not have tariffed rates. They argue that the language was meant to ensure that Lifetime customers were enrolled in the "lowest tariffed" or "lowest generally available" residential rate.⁵⁵

⁵² Order at ¶ 64.
⁵³ Order at ¶64, RCC and USCOC Comments at ¶52.
⁵⁴ Order at ¶66.
⁵⁵ Sprint Petition at 52, Alltel Petition at ¶9.

43. Sprint argues that the Commission's interpretation of the rule conflicts with the purpose of Lifeline and Link-Up by requiring ETCs to make higher-cost plans available to customers.⁵⁶ Likewise, Alltel claims that the Commission's decision on this issue will provide an incentive to low income customers to spend limited resources on high cost plans.⁵⁷

44. Staff maintains that the Commission's interpretation of 47 C.F.R. § 54.403(b) is correct. As support for this interpretation, Staff points to language in the FCC's *Universal Service Order*⁵⁸ stating that "universal service principles may not be realized if low-income support is provided for service inferior to that supported for other subscribers."⁵⁹

45. Staff states that even if Alltel's and Sprint's interpretation of the rule is correct, the rule does not preclude the Commission from expanding the requirement.⁶⁰ Staff notes that expanding the requirement does not increase the burden on ETCs, pointing out that ETCs still maintain the ability to discontinue service to Lifeline customers that do not pay for services.

46. Finally, Alltel states that the Commission is the first in the many jurisdictions it operates to expand the applicability of Lifeline support beyond the lowest rate plan.⁶¹ However, Staff is aware of at least one jurisdiction, Utah, which requires ETCs to allow Lifeline customers to choose any plan.⁶²

47. The Commission will not reconsider its order directing ETCs to allow Lifeline customers to select which plan to apply the Lifeline discount. The Commission believes it is the public interest to ensure that Lifeline customers are not limited to one plan. The Commission notes that other carriers participating in this docket do provide a choice of plans to Lifeline

⁵⁶ Sprint Petition at ¶ 53.

⁵⁷ Alltel Petition at ¶11.

⁵⁸ In the Matter of Federal-State Joint Board on Universal Service. CC Docket No. 96-45. *Report and Order*. Rel. May 8, 1997. (*Universal Service Order*).

⁵⁹ Staff Response at ¶18 citing *Universal Service Order* at ¶ 28.

⁶⁰ Staff Response at ¶ 20.

⁶¹ Alltel Petition at ¶21.

⁶² Staff Response at ¶19, citing to Utah Administrative Rule R746-341.

customers. Finally, even if Sprint and Alltel's interpretation of 47 C.F.R. § 54.403(b) has merit, neither have provided the Commission with authority stating that this Commission cannot expand the application of the Lifeline discount to plans other than the lowest cost plan provided by an ETC. Likewise, Sprint and Alltel have not demonstrated that they are harmed in any way by giving their low-income customers more choice among the services they are offering as ETCs.

VI. Exemption of Incumbent ETCs from Filing Two-Year Service Quality Improvement Plans

48. In its Order, the Commission required CETCs to file two-year service quality improvement plans. The plans are to be filed on an annual basis. RCC and USCOC argue that the Commission should have required all ETCs to file the annual plans, not just CETCs. They argue the failure to do so is not competitively neutral.⁶³ They state that all ETCs are subject to the same requirements regarding the proper use of support.⁶⁴ RCC and USCOC argue that the Commission provided no justification for not applying this requirement equally to all ETCs.⁶⁵

49. Staff explains that the FCC encouraged, but did not require, state commissions to adopt its conditions for ETCs.⁶⁶ Staff also notes that the FCC only designates CETCs, therefore *incumbent ETCs are not subject to the federal requirements.*⁶⁷ Finally, Staff explains that wireline ETCs are subject to certain quality of service standards and reporting requirements that are not applicable to wireless ETCs.⁶⁸

50. The Commission will not reconsider its finding that CETCs must file two-year quality improvement plans on an annual basis. Incumbent ETCs are subject to certain quality

⁶³ RCC and USCOC Petition at ¶19.

⁶⁴ RCC and USCOC Petition at 17.

⁶⁵ RCC and USCOC Petition at ¶18.

⁶⁶ Staff Response at ¶22.

⁶⁷ Staff Response at ¶22.

⁶⁸ Staff Response at ¶23.

standards and reporting requirements that are not applicable to all CETCs. Those standards and reporting requirements allow the Commission to monitor the service quality of incumbent ETCs in a manner that ensures quality service. Exempting incumbent ETCs from the requirement to file the quality improvement plans is justified.

VII. Applicability of Billing Standards

51. The Commission stated in its Order that while wireless carriers that seek ETC status avail themselves of the Commission's jurisdiction for the purpose of obtaining ETC designation, the Commission has yet to determine whether wireless ETCs will be required to comply with the billing standards.⁶⁹ The Commission is currently considering revisions to the billing standards in Docket No. 06-GIMT-187-GIF (docket 06-187). Several parties to this docket recommended that the billing standards be applied to wireless ETCs. Alltel, RCC and USCOC, and Sprint argued that wireless ETCs should not be required to comply with state billing standards.⁷⁰ The Commission found that it would be premature to determine whether to apply the billing standards to wireless ETC before the Commission has the benefit of considering the result of the parties' efforts in docket 06-187. RCC and USCOC seek reconsideration of the Commission's determination to consider applicability to wireless ETCs of the billing standards in docket 06-187.

52. RCC and USCOC state that while they are participating through the filing of comments and attending workshops in docket 06-187, the applicability of the standards to wireless carriers has not yet been addressed.⁷¹ RCC and USCOC lack confidence that the issue

⁶⁹ Order at ¶17.

⁷⁰ Order at ¶18.

⁷¹ RCC and USCOC Petition at ¶22.